

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE STATE STREET BANK AND  
TRUST CO. FIXED INCOME FUNDS  
INVESTMENT LITIGATION

Case No. 08-MD-1945 (RJH)

This Document Relates to:

APOGEE ENTERPRISES, INC. ON BEHALF  
OF THE APOGEE ENTERPRISES, INC.  
401(K) RETIREMENT PLAN.

Plaintiff,

v.

Case No. 09-cv-1899 (RJH)

STATE STREET BANK AND TRUST  
COMPANY; AND ING INSTITUTIONAL  
PLAN SERVICES LLC,  
FORMERLY KNOWN AS CITISTREET LLC,

Defendants.

**APOGEE'S MOTION FOR  
SUMMARY JUDGMENT  
ON COUNTS ONE AND TWO  
OF ITS COMPLAINT  
AGAINST STATE STREET**

ING INSTITUTIONAL PLAN SERVICES  
LLC, FORMERLY KNOWN AS CITISTREET  
LLC,

Counterclaim,  
Cross-Claim, and  
Third-Party Plaintiff,

v.

**ORAL ARGUMENT REQUESTED**

APOGEE ENTERPRISES, INC., APOGEE  
PENSION INVESTMENT COMMITTEE,  
RUSSELL HUFFER, ANTHONY NOWAK,  
DAVID BLANK, GARY JOHNSON,  
RICHARD KRAUS, SILVEROAK WEALTH  
MANAGEMENT LLC, AND STATE STREET  
BANK AND TRUST COMPANY,

Counterclaim,  
Cross-Claim, and  
Third-Party Defendants.

Plaintiff Apogee Enterprises, Inc., on behalf of the Apogee Enterprises, Inc. 401(k) Retirement Plan (“Apogee”), hereby moves the Court under Rule 56 of the Federal Rules of Civil Procedure for an Order granting Apogee summary judgment on Counts One and Two of its Complaint against State Street Bank and Trust Company (“State Street”) and entering judgment in favor of Apogee on these two counts as follows:

- (1) for judgment in favor of Apogee and against State Street in the amount of \$2,044,445.77 for Apogee’s compensatory damages;
- (2) for an award of pre-judgment interest from August 31, 2007 to today’s date (March 25, 2011) in the amount of \$16,782.64, and additional prejudgment interest from March 26, 2011 to the date judgment is entered at the daily rate of \$12.88;
- (3) for an Order pursuant to Rule 54(d)(2) of the Federal Rules of Civil Procedure granting Apogee thirty days from the entry of judgment to file a motion for attorneys’ fees and costs in accordance with ERISA § 502(g)(1); and
- (4) for such other relief in Apogee’s favor as the Court deems proper.

Apogee’s Motion is based on the accompanying Memorandum of Law in Support of its Motion for Summary Judgment, Rule 56.1 Statement of Undisputed Material Facts, and Affidavits and Exhibits served and filed herewith, and upon all the pleadings and proceedings in this matter.

Dated: March 25, 2011.

By s/Steven L. Severson  
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**Attorneys for Plaintiff Apogee Enterprises  
Inc., on behalf of the Apogee Enterprises,  
Inc. 401(k) Retirement Plan**

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